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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91180232
Party	Defendant SM Productions
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Submission	Other Motions/Papers
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Date	01/18/2008
Attachments	Applicants Request to Vacate Default.pdf (10 pages)(589572 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

In the matter of trademark application Serial No. 78/697224
For the Mark **NEW KIDS ON THE BLOCK**
Published in the Official Gazette on June 26, 2007

NKOTB, Inc., (the "Opponent")	
v.	Opposition No. 91180232
SM Productions (the "Applicant")	

APPLICANT'S REQUEST TO SET ASIDE ENTRY OF DEFAULT

STUART WACHS, an attorney at law duly admitted to practice before the bar of the State of New York, certifies that:

1. I am a member of the law firm of Fogel & Wachs PC. SM Productions (the "Applicant") has retained my firm in connection with the captioned Opposition. I am fully familiar with the facts set forth herein.

2. The Applicant hereby requests that the Board set aside entry of default pursuant to Fed. R. Civ. Pro. 55(b). The default should be set aside because the Applicant can demonstrate good cause excusing its default.

3. Pursuant to Rule 55(b), the Board may set aside a default for "good cause shown." Good cause consists of a showing that: (1) the Applicant's delay in filing an answer was not the result of willful misconduct or gross neglect; (2) the Applicant's delay in filing an answer will not substantially prejudice the Opponent; and (3) the Applicant has a meritorious defense to the action. *See* Trademark Trial and Appeal Board Manual of Procedure § 312.02 at 300-73.

The Applicant's Default Was Not the Result of Willful Misconduct or Gross Neglect.

5. The history of the prosecution of the Applicant's application and the fact that the Applicant has promptly requested relief from default demonstrates that the Applicant had no intention of defaulting and is not guilty of gross neglect.

6. The Applicant filed the application on August 22, 2005. The application was amended on October 7, 2005. Thereafter, in response to a notice of abandonment, the Applicant petitioned to revive its application which petition was granted. And on March 28, 2007, the Applicant filed a response to office action. However, at and around the time that the answer was due, the Applicant was out of contact with counsel. Moreover, the Applicant's counsel was involved in medical issues in connection with a close family member. The Applicant's prosecution of its application demonstrates its interest in the Mark and in completing the trademark registration process.

7. As set forth below, the Applicant's prompt response to the notice of default demonstrates that the Applicant continues to be determined to complete the trademark registration process. These actions negate any conclusion that the Applicant negligently or willfully defaulted in answering the Notice of Opposition.

The Applicant's Delay in Filing an Answer Will Not Substantially Prejudice the Opponent

8. The Opponent filed its Notice of Opposition on October 23, 2007. The Applicant's answer was due on December 2, 2007. On December 21, 2007, the Board mailed notice of default to Applicant attorney. The Applicant timely filed this request to set aside the default. The month and a half delay in this proceeding cannot in any way be deemed to have prejudiced the Opponent.

The Applicant Has a Meritorious Defense to the Action

9. As set forth in the proposed answer attached as Exhibit 1, the Applicant has a meritorious defense to the claims made in the Notice of Opposition.

10. In brief, the Applicant is a partnership consisting of the heirs of Richard "Dick" Scott, who died in August 2006, and Denny Marte. At the time of the application, the partnership consisted of Dick Scott and Denny Marte. In the mid-late 1980s, Messrs. Scott and Starr formed the popular teen musical act "New Kids on the Block" (the "New Kids"). The corporate vehicle for their ownership and production of the New Kids was a corporation called Big Step Productions, Inc. ("Big Step"). Through Big Step, Messrs. Scott and Starr located the talent, hired the talent and guided the New Kids from their inception until the New Kids' break up in 1994. Mr. Scott and his heirs continue to receive royalties in connection with the New Kids.

11. In 1992, Big Step assigned the Mark to the New Kids. The New Kids, however, never registered the assignment of the Mark. That is not surprising. The New Kids were headed for a break up.

12. Upon information and belief, the last New Kids' album was recorded in 1994; the New Kids disbanded in June 1994.

13. On September 8, 1997, the New Kids' Class 9 trademark registrations expired. On August 11, 1997, the New Kids' Class 41 registration for live performances (74057292) expired and, on January 18, 1999, the New Kids' other Class 41 registrations expired.

14. Thereafter, Mr. Scott through the Applicant decided to revive the idea of the New Kids. The Applicant has formed a new group, produced musical recordings of the new group,

produced audio/visual footage of the new group for broadcast, and has had the new group perform live musical performances.

15. The attached proposed answer demonstrates that the Applicant has meritorious defenses to the allegations and claims in the Notice of Opposition.

WHEREFORE the Applicant requests that the notice of default be set aside and that the Applicant be granted such other and further relief as the Board deems just and equitable.

Dated: Larchmont, New York
January 18, 2008

Brett Green, Esq,
Attorney for the applicant SM Productions, by
Fogel & Wachs PC, of counsel

By: ___*/Stuart Wachs /*_____
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EXHIBIT 1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

In the matter of trademark application Serial No. 78/697224
For the Mark **NEW KIDS ON THE BLOCK**
Published in the Official Gazette on June 26, 2007

NKOTB, Inc, (the "Opponent")	:	
v.	:	Opposition No. 91180232
SM Productions (the "Applicant")	:	**ANSWER**

SM Productions (the "Applicant"), by its attorneys, Fogel & Wachs PC, of counsel to counsel of record Brett Green, for its Answer to the Notice of Opposition of NKOTB, Inc. (the "Opponent"), alleges that it:

1. Admits the allegation in paragraph 1 of the Notice of Opposition except denies that the "Group" was promoting and otherwise commercially exploiting their musical performances and recordings because the Applicant's predecessor in interest, Big Step Productions, Inc. ("Big Step") and its principals, Richard "Dick" Scott and Maurice Starr, were promoting and otherwise commercially exploiting musical performances by the "Group." The Applicant lacks knowledge or information sufficient to form a belief as to the allegations in second sentence of paragraph 1 of the Notice of Opposition.
2. Lacks knowledge or information sufficient to form a belief as to the allegations in paragraph 2 of the Notice of Opposition except states that the "Group" disbanded in 1994 and, upon information and belief, no longer exists.

3. Admits the allegation in paragraph 3 of the Notice of Opposition except lacks knowledge or information sufficient to form a belief as to the allegation that Big Step is Opponent's predecessor in interest. The Applicant states that the Applicant is Big Step's successor in interest.

4. Admits the allegation in paragraph 4 of the Notice of Opposition except states that the written agreement speaks for itself. The Applicant further states that, upon information and belief, the "Group" never registered any assignments of any trademarks that might have been assigned pursuant to the written agreement. The Applicant further states that, on September 8, 1997, the Class 9 trademark registrations expired; on August 11, 1997, the Class 41 trademark registration for live performances (74057292) expired; and on January 18, 1999, the other Class 41 trademark registrations expired.

5. Lacks knowledge or information sufficient to form a belief as to the allegations in paragraph 5 of the Notice of Opposition except denies that either the "Group" or the Opponent has any exclusive rights in the Mark. The Applicant further states that the "Group" disbanded in 1994 and that, upon information and belief, the "Group" has not existed since 1994.

6. Denies the allegation in paragraph 6 of the Notice of Opposition except states that Big Step and/or Dick Scott invested energy, time and money in the Mark.

7. Admits the allegation in paragraph 7 of the Notice of Opposition except denies that Opponent has used or promoted the Mark.

8. Admits the allegation in paragraph 8 of the Notice of Opposition except states that the applications speak for themselves except states that the application speaks for itself.

9. Admits the allegation in paragraph 9 of the Notice of Opposition.

10. Denies the allegation in paragraph 10 of the Notice of Opposition and states that the Applicant does not need the Opponent's authority to use the Mark or file the Application.

11. Admits the allegation in paragraph 10 of the Notice of Opposition except states that the correspondence speaks for itself.

12. Denies the allegation in paragraph 12 of the Notice of Opposition except states that the Applicant's Preliminary Amendment speaks for itself.

13. Denies the allegation in paragraph 13 of the Notice of Opposition except states that the correspondence speaks for itself.

14. Denies the allegation in paragraph 14 of the Notice of Opposition and states that the application speaks for itself.

15. Denies the allegation in paragraph 15 of the Notice of Opposition and states that the application speaks for itself.

16. Denies the allegation in paragraph 16 of the Notice of Opposition.

17. Admits the allegation in paragraph 17 of the Notice of Opposition except states that the Applicant's response speaks for itself.

18. Denies the allegation in paragraph 18 of the Notice of Opposition.

19. Denies the allegation in paragraph 19 of the Notice of Opposition.

20. Denies the allegation in paragraph 20 of the Notice of Opposition except states that the specimen speaks for itself.

21. Denies the allegation in paragraph 21 of the Notice of Opposition except states that the specimen refers to a new "Group" that is performing.

22. Denies the allegations in paragraphs 22 through 30 inclusive of the Notice of Opposition.

WHEREFORE the Applicant requests that the Notice of Opposition be dismissed with prejudice and that the Applicant be granted such other and further relief as the Board deems just and equitable.

Dated: Larchmont, New York
January 18, 2008

Brett Green, Esq,
Attorney for the applicant SM Productions, by
Fogel & Wachs PC, of counsel

By: ___*/Stuart Wachs /*_____
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To: Roberts & Rithoz, LLP
Attorneys for opponent NKOTB, Inc.
183 Madison Avenue, Penthouse
New York, New York 10016

Certificate of Service

The undersigned hereby certifes that a true and complete copy of the foregoing APPLICANT'S REQUEST TO SET ASIDE ENTRY OF DEFAULT has been served on Roberts & Rithoz, LLP, Attorneys for opponent NKOTB, Inc.
by mailing said copy on January 18, 2008, via First Class Mail, postage prepaid to:

Roberts & Rithoz, LLP
183 Madison Avenue, Penthouse
New York, New York 10016

Dated: New York, New York
January 18, 2008

By: ___*/Stuart Wachs /*_____
Stuart Wachs, Esq. (SW 6782)